

Internal Revenue Service  
Director, Exempt Organizations

Department of the Treasury  
P.O. Box 2508 - EP/EO  
Cincinnati, OH 45201

Date: DEC 04 2001

Employer Identification Number:

Person to Contact - I.D. Number:

Contact Telephone Numbers:

Phone

FAX

CERTIFIED MAIL

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 and its Regulations. Based on the information provided, we have determined that you do not qualify for the recognition of exemption from Federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 and its Regulations.

The evidence presented disclosed that you were incorporated on

Your purposes as stated in your Articles of Incorporation are to provide consulting services and create visual [REDACTED] for public and not-for-profit human service organizations.

The information submitted with your application, Form 1023, indicates that your primary activities are to provide consulting services and create visual [REDACTED] (art) for private, public and not-for-profit human service organizations. The consulting services will include the providing of marketing, fund raising and public relations. While the providing of visual [REDACTED] will include providing of graphic design and original art work.

The fees charged for your services will be determined as follows:

- A. The unpaid volunteer consultants will record the time spent on providing the service to the client.
- B. You will then calculate the market rate for the donated services.
- C. The clients will then be charged using a sliding fee scale. The fee scale will be to charge private corporations [REDACTED] percent of the market rate and the non-profit and public agencies [REDACTED] percent of the market rate.

Section 501(c)(3) of the Internal Revenue Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious scientific and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under section 501(c)(3) of the Internal Revenue Code, an organization must be both "organized" and "operated" for one or more purposes specified in that section. If the organization fails to meet the organizational test or the operational test, it is not exempt (Regs. 1.501(c)(3)-1(i)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states, in part, that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

Revenue Ruling 71-529, 1971-2 CB 234, granted exemption under section 501(c)(3) to an organization which was providing managerial assistance to colleges' and universities' endowment funds for a charge substantially below cost. The organization provided this service only to members, which was restricted to 501(c)(3) organizations. The members were charged only a nominal fee and the expenses were mostly paid with grants from other independent charitable organizations. The service concluded that since the organization was providing the service to only organizations exempt under section 501(c)(3) of the Internal Revenue Code and the fees charged were substantially below cost, the activities were charitable in nature. Therefore, the organization was entitled to exemption under section 501(c)(3) of the Code.

Revenue Ruling 72-369, 1972-2 CB 245, denied exemption to an organization that was providing managerial and consulting services, at cost to non-profit 501(c)(3) organizations. The service concluded that providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services, in this case, were provided at cost and for 501(c)(3) organizations was not sufficient to characterize these activities as charitable, within the meaning of section 501(c)(3) of the Internal Revenue Code.

Unlike the organization that received exemption in Revenue Ruling 71-529 you are not limiting your services to only organizations exempt under section 501(c)(3) of the Code. You also differ in the fact that the organization in Revenue Ruling 72-259 was providing the service at a nominal fee, while your fees are based on the market rate for the services.

[REDACTED]

Your organization is similar to the organization denied exemption in Revenue Ruling 72-369. Your activities in this case are to provide consulting services and visual [REDACTED]. These activities, like the activities of the organization denied exemption in Revenue Ruling 72-369, are ones that are ordinarily carried on for profit. The organization in Revenue Ruling 72-369 was denied exemption for providing the service at cost and only to tax exempt 501(c)(3) organizations. You are not only providing the services to public and non-profit organizations but to commercial corporations as well. You state you will be using a sliding fee scale; commercial corporations will be charged the full market rate and non profit organizations will be charged [REDACTED] % of the market rate. The services for which you are charging fees are based on market rates. It is apparent that the fees for the services are not being provided substantially below cost. Therefore the organization is not operating in a manner consistent with the requirements of section 501(c)(3) of the Internal Revenue Code.

As stated in Regs. 1.501(c)(3)-1(a)(1) an organization will not qualify for exemption under section 501(c)(3) of the Code unless it meets both the organizational and operational tests. Since you have failed to meet the operational test, you are not entitled to exemption under section 501(c)(3) of the Code. Therefore your request for exemption under section 501(c)(3) of the Code is being denied.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the



Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

*Steven Miller*

Director, Exempt Organizations

Enclosures: Form 6018  
Publication 892

Department of the Treasury - Internal Revenue Service  
Consent to Proposed Adverse Action  
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

DEC 04 2001

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption

☐ Revocation of exemption, effective

☐ Modification of exemption from section 501(c)( ) to section 501( ), effective

☐ Classification as a private foundation described in section 509(a), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)( ), effective

☐ Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date